

REMARKS

Reconsideration of the application in view of the above amendments and the following remarks is respectfully requested. Claims 9, 20, and 31 have been canceled. Claims 1, 3, 5-6, 8, 10-12, 14, 16-17, 19, 21-23, 25, 27-28, 30, and 32-33 have been amended. Claims 1-8, 10-19, 21-30, and 32-33 are currently pending in the application.

CLAIM REJECTIONS – 35 U.S.C. §101

In the Office Action, the Examiner rejected claims 23-33 under 35 U.S.C. §101 as being directed to non-statutory subject matter. Specifically, the Examiner contended that the "mechanism" recited in the claims could be reasonably interpreted to be software *per se*. This rejection is respectfully traversed.

First of all, Applicants note that claims 23-30 and 32-33 (claim 31 has been canceled) no longer recite any "mechanisms". Rather, as amended in the previous response, the claims now recite the elements of the apparatus claims in "means-plus-function" format, as allowed by 35 U.S.C. §112, sixth paragraph. Thus, it appears that the Examiner may have made this rejection in error.

Furthermore, Applicants respectfully submit that "means-plus-function" elements in an apparatus claim cannot be reasonably interpreted to encompass software *per se*. Specifically, each "means-plus-function" element recites a means for performing a certain function. Thus, an item can be reasonably interpreted to be such a means if and only if that item is capable of performing that function. Software *per se* does not satisfy this requirement. As is extremely well known in the computing arts, software per se (i.e. program code in and of itself) is incapable of performing any functions. By itself, software or program code does nothing. Functionality is realized only when the software is executed by one or more processors. Since software *per se* is

incapable of performing any functions, and since each "means-plus-function" element recites a means for performing a function, it is absolutely clear that a "means-plus-function" element in an apparatus claim cannot be reasonably interpreted to encompass software *per se*.

For at least the reasons given above, Applicants respectfully submit that the rejection of claims 23-30 and 32-33 under 35 U.S.C. §101 is improper, and request that this rejection be withdrawn.

CLAIM REJECTIONS – 35 U.S.C. §103

In the Office Action, the Examiner rejected claims 1-33 under 35 U.S.C. §103(a) as being unpatentable over Berger et al. (U.S. Pub No. 2003/0014466 A1) in view of Armstrong et al. (U.S. Pub No. US 2002/0156824 A1). Claims 9, 20, and 31 have been canceled. Independent claims 1, 12, and 23 have been amended to clarify the subject matter that is being claimed.

On January 14, 2008, the undersigned attorney conducted a telephone interview with the Examiner. During the interview, amended claim 1 was discussed, and agreement was reached that claim 1, as amended, distinguishes over Berger and Armstrong. Applicants thank the Examiner for this acknowledgement. Therefore, Applicants respectfully submit that claim 1 is patentable over Berger and Armstrong. Applicants further submit that all of the dependent claims that depend from claim 1 are likewise patentable over Berger and Armstrong.

Independent claim 12 is a machine readable storage medium counterpart of claim 1, and independent claim 23 is an apparatus counterpart of claim 1. Applicants respectfully submit that these claims are also patentable over Berger and Armstrong. Applicants further submit that all of the dependent claims that depend from claims 12 and 23 are likewise patentable over Berger and Armstrong.

CONCLUSION

For the foregoing reasons, Applicants submit that all of the pending claims are patentable over the art of record, including any art cited but not applied. Accordingly, allowance of all of the pending claims is hereby respectfully solicited.

The Examiner is invited to telephone the undersigned at (408) 414-1080 to discuss any issues that may advance prosecution.

No fee is believed to be due specifically in connection with this Reply. To the extent necessary, Applicants petition for an extension of time under 37 C.F.R. § 1.136. The Commissioner is authorized to charge any fee that may be due in connection with this Reply to our Deposit Account No. 50-1302.

Respectfully submitted,

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